IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.4124/1997.

Bishan Lal (through his Legal Representatives) & Others.

VERSUS

Gopi Lal & Others.

12.12.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Suresh Pareek, for the petitioners.
Mr.Azad Ahmed, for the respondents.

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A suit was filed by Gopi Lal son of Kishna, Ram Kunwar son of Govinda and Ram Kanya widow of Govinda as plaintiffs against Motilal and Chhitar Lal for partition.

A preliminary decree in the suit for partition was passed wherein the plaintiff No.1 was awarded 1/3rd share and the plaintiffs No.2 and 3 were awarded 1/3rd share jointly and the defendant No.1 Motilal was awarded 1/3rd share in respect of the lands mentioned in the judgment (Annexure-1). Thereafter, a final decree came to be passed vide Annexure-1 judgment dated 08.07.1988 and as per the report of the Tehsildar, the land comprising of various khasra numbers were divided between the parties in 1/3rd share each.

The petitioners claiming themselves to be purchaser of the land from Motilal preferred an appeal. The aforesaid appeal filed by the petitioners was dismissed as being barred by limitation. An appeal was preferred before the learned Board of Revenue which directed that the appeal be treated as revision petition and consequently after hearing the parties, the

revision petition was also dismissed. It is in these circumstances that the petitioners have approached this court by means of the present writ petition.

It is not in dispute that no appeal was filed against the preliminary decree dated 21.09.1987 within time by Motilal or by any of the parties and only the petitioners who claim to be the purchasers from Motilal preferred the appeal which was held to be barred by limitation having been filed even after passing of the final decree dated 08.07.1988.

During the course of hearing, learned counsel appearing on behalf of the petitioners submitted that the petitioners would be satisfied if the petitioners are transposed in the decree on the basis of the sale-deed in their father in place of Motilal, defendant No.1, in whose favour the decree for 1/3rd share in the land was passed by the learned trial court.

Learned counsel appearing on behalf of the plaintiffs-respondents, however, objects to the same. Learned counsel has raised an objection that the sale-deed which the petitioners claim to be in their favour was never produced before the learned courts below and even that the said sale-deed was not even registered.

However, it is admitted by the parties that a preliminary decree for partition was passed in favour of the plaintiffs granting them 1/3rd share each and 1/3rd share in favour of the defendant No.1 Motilal.

I have considered the rival submissions. So far as the plaintiffs' case is concerned, even as per the preliminary decree, the plaintiffs have received 1/3rd share i.e. Gopal Lal

has been awarded 1/3rd share and Ram Kunwar and Ram Kanya have been awarded 1/3rd share jointly and Motilal from whom the petitioners claim to have purchased the land was also awarded 1/3rd share. In the final decree (Annexure-1) it has come on record that as per the report of the Tehsildar, the property was divided by metes and bounds assigning specific parcels of land to each of the co-sharers. The plaintiffs are only entitled to the share as per the preliminary decree and the specific portion which was awarded by the final decree prepared by the S.D.O., Kota vide Annexure-1 dated 08.07.1988.

So far as the share of Motilal is concerned, the petitioners may file an application before the learned S.D.O., Kota based upon their documents of title and the learned S.D.O. would decide the claim of the petitioners after notice to Motilal and in case the names of the petitioners are found to be in accordance with law, they would be entitled to the share as provided in the final decree dated 08.07.1988 (Annexure-1) of Motilal, the defendant No.1, from whom the petitioners claim to have purchased the land in dispute in accordance with law subject to determination of any objections which Motilal may raise in this behalf.

Consequently, the writ petition as well as the stay application are accordingly disposed of.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.